IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Mohan Lal
vs.
Chanwarlal and others.

S.B.CIVIL SECOND APPEAL NO.187/2004 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 28.4.2004 PASSED BY SHRI ABDUL KALAM DHERA, ADDITIONAL DISTRICT JUDGE NO.1, BIKANER IN CIVIL APPEAL (DECREE) NO.18/1998.

DATE OF JUDGMENT ::: 12.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. DK Gaur, for the appellant.
Mr. RR Nagori, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties and perused the record.

The defendant/tenant is aggrieved against the judgment of the trial court dated 22.4.1998 and appellate judgment

dated 28.4.2004 as the trial court decreed the suit for eviction of the appellant/tenant and the first appellate court dismissed the appellant's appeal.

It appears from the facts of the case that the plaintiffs filed suit for eviction of the tenant on the ground that the suit premises is required for the plaintiffs as the plaintiffs will construct their house over the suit property. The plaintiffs also pleaded that the defendant is not using the suit premises since long.

Another ground was of default in payment of rent.

The defendant contested the suit and submitted that the tenant is using the premises and the plaintiffs have other alternate accommodation to live.

The trial court held the defendant defaulter for payment of rent but it appears that it was first default and the defence of the defendant was not struck off, therefore, it appears that the suit was not decreed on the first default. The appeal against the said judgment of the first appellate court was dismissed.

Learned counsel for the appellant submitted that the two courts below committed serious error of law in holding the personal bonafide necessity of the plaintiffs. It is submitted that the suit of the plaintiff was decreed on the basis of only adverse inference drawn against the defendant.

After going through the reasons given in the impugned judgments of the two courts below, I do not find any substance in the said argument because of the reason that

both the courts below considered the evidence of the plaintiffs and defendant and thereafter reached to the conclusion that the plaintiffs bonafidely wanted to get the suit premises for the purpose of raising construction of their house. In view of the above, this finding of fact cannot be interfered in second appeal.

Accordingly, I do not find that any substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that sufficient time may be granted to vacate the suit premises because the appellant will have to make alternative arrangement.

Looking to the totality of the facts, this Court deems that the appellant be granted one year's time to vacate the suit shop.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month from today that he shall hand over the vacant possession to the landlord by or before 30.4.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.5.2007. The appellant shall also

deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya